Docket No. YOR920000804US1   *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Bantz et al.** § § Group Art Unit: **3621** Serial No.: **09/788,059** § § Examiner: **Elisca, Pierre E.** Filed: **February 16, 2001** § § For: **Apparatus and Methods for** § **Providing an Estimated Time of** § **Arrival Based Marketplace** §	

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ATTENTION: Board of Patent Appeals
and Interferences

APPELLANT'S BRIEF (37 C.F.R. 1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on January 13, 2004.

The fees required under § 1.17(c), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 C.F.R. 1.192(a))

REAL PARTIES IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines, Inc.

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-33

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: NONE
2. Claims withdrawn from consideration but not canceled: NONE
3. Claims pending: 1-33
4. Claims allowed: NONE
5. Claims rejected: 1-33

C. CLAIMS ON APPEAL

The claims on appeal are: 1-33

STATUS OF AMENDMENTS

There are no amendments after final rejection.

SUMMARY OF INVENTION

The present invention provides apparatus and methods for providing an estimated time of arrival based marketplace. The apparatus and methods solicit bids from one or more service providers for a requested service. The service providers may respond with bids that may include a price for providing the requested service along with an estimated time to perform the requested

service in a location associated with the service provider. See specification, page 10, line 24, to page 11, line 5.

The bids are used, along with travel such as data obtained from a travel data provider, to generate service search results that are provided to a client device. The service search results include the price charged by the service provider as well as estimated times of completion (ETAs) for obtaining the service from the service provider. The ETA may be a combination of travel time determined from the travel data and time of performance determined from the bid submitted by the service provider. See specification, page 12, line 23, to page 14, line 13.

The service search results may further include a service provider rating that provides an indication as to the accuracy of the ETAs. From the service search results, a user of the client device may submit an order for having a particular service provider from the service search results provide the requested service. See specification, page 14, to page 15, line 12.

ISSUES

The issues on appeal are as follows:

Whether claims 1-33 are unpatentable as being obvious over *Fader et al.* (US Patent No. 6,519,570) in view of *Baldwin et al.* (US Patent No. 6,310,952).

GROUPING OF CLAIMS

The claims on appeal do not stand or fall in a single group, but are grouped into in the following groups for the reasons set forth in the Argument section below:

Claims 1, 2, 4, 9-13, 15, 20-24, 26, and 31-33 form group A. Claims 3, 14, and 25 form group B. Claims 5, 16, and 27 form group C. Claims 6, 17, and 28 form group D. Claims 7, 8, 18, 19, 29, and 30 form group E.

ARGUMENT

The Office Action rejects claims 1-33 under 35 U.S.C. § 103 as being unpatentable over Fader et al. (U.S. Pat. No. 6,519,570) in view of Baldwin et al. (6,310,952). This rejection is respectfully traversed.

I.   The Prior Art, When Considered as a Whole, Fails to Teach or Suggest Obtaining Bids from a Plurality of Service Providers (Groups A-E)

As to claims 1-33, the Office Action states:

> As per claims 1, 3, 7-9, and 11 Fader substantially discloses a system/method of conducting a time-auction among queuing customers. A bid is received from one of the queuing customers and compared with the prices being offered by the other customers waiting in line. The queuing showing a user's updated position in the queue due to having bid a higher rate to receive services from the information provider (which is readable as Applicant's claimed invention wherein it is stated that a method of providing service provider information to a client device in a distributed computer system) comprising:
>
> obtaining at least bids from a plurality of service providers (plurality of service providers or bids receive from one of the queuing customers) for providing a service (see., abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that the customer is billed at the highest bid price for the services received from the service provider. Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, col 6, lines 47-64, plurality of bids); providing the bids from the plurality of service providers (abstract, col 6, lines 47-64, Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, col 6, lines 47-64, plurality of bids).
>
> It is to be noted that Fader fails to explicitly disclose an estimated time (or travel) completion for the service. However, Baldwin discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader by including the limitation detailed above because such modification would provide automated access to service providers based upon an estimated amount of time.

Office Action, dated September 18, 2003. Appellants respectfully disagree. *Faber* teaches a

system and method for conducting a time auction. More particularly, *Faber* teaches a system that enables customers to advance ahead of other waiting customers and receive services from a **particular** information or service provider ahead of those who are not willing to pay as much for the service. See col. 2, lines 54-57. As stated in *Faber*, "[c]onsumers interested in acquiring services must first identify the service provider who is capable of providing the required services." See col. 1, lines 16-18. In other words, *Faber* is not concerned with identifying a service provider. Rather, *Faber* is concerned with a time auction system and method for consumers who are bidding to gain access to a service provider.

Similarly, *Baldwin* teaches a method and apparatus for providing access to an overly popular service provider. *Baldwin* teaches a queuing system that allows a caller to bid an amount of money to move up in the queue. See col. 2, lines 20-31. *Baldwin* also teaches a user interface system that informs the caller of an estimated amount of time before the caller will reach the top of the queue. See col. 4, lines 41-51. Therefore, just like *Faber*, *Baldwin* is not concerned with identifying a service provider. Rather, *Baldwin* is concerned with a time auction system and method for consumers to bid against each other to gain access to a particular service provider.

In contradistinction, the present invention provides a method, apparatus, and computer program product for providing bids from a plurality of service providers to a client device. Claim 1 recites:

> 1.   A method of providing service provider information to a client device in a distributed computer system, comprising:
> obtaining bids from a plurality of service providers for providing a service;
> determining an estimated time of completion for the service for each of the plurality of service providers; and
> providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device.

Faber and *Baldwin*, taken individually or in combination, fail to teach or suggest "obtaining bids from a plurality of service providers for providing a service," as recited in claim 1. More particularly, *Baldwin* teaches providing an estimated time the customer will be waiting in the queue; however, *Baldwin* does not teach determining an estimated time of **completion** of the service for each of the **plurality** of service providers. Furthermore, neither *Faber* nor *Baldwin* teaches or suggests providing the **bids** from the **plurality** of service providers **and the estimated**

time of completion for each of the plurality of service providers to a client device.

The Office Action states:

a. "obtaining bids from a plurality of service providers for providing a service". As stated above, Fader discloses this limitation in the abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that the customer is billed at the highest bid price for the services received from the service provider. Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, and col 6, lines 47-64, plurality of bids).

Office Action, dated September 18, 2003. Appellants respectfully disagree. The Abstract of

Faber states:

> A system and a method of conducting a time-auction among queuing customers is described. A bid is received from one of the queuing customers and compared with the prices being offered by the other customers waiting in line. If the bid is higher than at least one of the prices, the bidding customer is advanced in line ahead of the customer offering the lower price. The system and method provide a mechanism for customers willing to pay more to advance in the queue and to move ahead of those not willing to pay as much. At the same time, the system and method allow vendors such as service providers, for whose good or services customers are willing to wait in line, to maximize the price charged for their services at any given moment.

Faber, Abstract. While a plurality of service providers may be supported, *Faber* does not teach

or suggest "obtaining bids from a plurality of service providers for providing a service" and

"providing the bids from the plurality of service providers and the estimated time of completion

for the service for each of the plurality of service providers to the client device," as recited in

claim 1. The cited portion of *Faber* also states:

> This bidding process may continue as described above, with customers offering higher bids and advancing ahead of one another as a result. When the service provider becomes available to provide services to the next customer, a logic unit within the system will establish a real-time communications connection between the customer associated with the number-1 position in the queue at that time. The real-time communications connection may be established over a telephone network, a computer network, satellite network, wireless communications network, direct TV network, or other type of communications network, and may include an audio connection, video connection, or other type of

> voice or data connection. The customer in the number-1 position at
> the time the service provider becomes available, in effect, has won
> the time auction by offering to pay the highest price to receive the
> service provider's services ahead of all other customers in the
> queue. The customer is billed at the highest bid price for the
> services received from the service provider.

Faber, col. 6, lines 46-64. Again, *Faber* fails to teach a method for providing service provider information to a single client device in which bids from a plurality of service providers are obtained and provided to the client device. Rather, *Faber* teaches that an individual client contacts only a single service provider.

Faber and *Baldwin* teach methods and systems for allowing customers to bid against each other for access to a single service provider. This is contrary to the present invention, which provides a method, apparatus, and program for allowing service providers to bid against each other based on an estimated time of completion of the service. In both *Faber* and *Baldwin*, if a plurality of service providers were available, there would be no need to pit customers against one another for access to a single service provider. The applied references, taken alone or in combination, fail to teach each and every claim limitation. Therefore, claim 1 is not rendered obvious by the proposed combination of *Faber* and *Baldwin*.

The Office Action also states:

> b. "an estimated time of completion of the service for each of the plurality of
> service providers". However, the Examiner respectfully disagrees because
> Baldwin discloses a method/system for providing easy access or third instructions
> to a service provider that provides service over a communications system. A
> queue 27 informs a caller of an estimated amount of time before the caller will
> reach the top of the queue. A set of information includes information such as the
> name of the caller, the amount of money the caller is willing to pay, or bid , for a
> queue (see., Baldwin, col 4, lines 33-61, please note that estimated time of
> completion is readable as when the queue 27 informs the caller or user of an
> estimated amount of time before completing the call or bid. Therefore, it would
> have been obvious to a person of ordinary skill in the art at the time the invention
> was made to modify the time-auction of Fader by including the limitation detailed
> above because such modification would provide automated access to providers
> based upon an estimated amount of time.

Office Action, dated September 18, 2003. Appellants respectfully disagree. As stated in the Office Action, *Baldwin* clearly teaches informing a caller of an estimated amount of time before the caller will reach the top of the queue, which can only be interpreted as an estimated time of a

start of a service and **not** an estimated time of **completion**. Somehow, the Office Action alleges this is "readable" as an estimated time of completion. However, the only motivation for interpreting the teachings of *Baldwin* in this manner is to reconstruct the present invention using the instant claims as a template. Therefore, Appellants maintain that *Baldwin* does not teach or fairly suggest "providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device," as recited in claim 1.

Furthermore, *Baldwin* clearly teaches allowing customers to bid against each other for access to a service provider, rather than allowing a plurality of service providers to bid for the right to provide a service to a single customer, as in the present invention. Therefore, *Baldwin* clearly does not teach or suggest providing the estimated time of completion for the service **for each of the plurality of service providers** to a client device, as alleged in the Office Action.

Furthermore, the Office Action states:

d. "Obtaining bids from a plurality of service providers". As stated above, Fader discloses a plurality of service providers **or** bids receive from one of the queuing customers for providing a service (see., abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that a bid is received from one of the queuing customers and compared with the prices being offered by the other customers waiting in line).

Office Action, dated September 18, 2003. Appellants respectfully disagree. The Office Action fails to proffer any reasoning as to why receiving bids from a plurality of customers, as taught by *Faber*, is somehow equivalent to obtaining bids from a plurality of service providers, as presently claimed. Appellants maintain that neither *Faber* and *Baldwin*, taken individually or in combination, fail to teach or suggest "obtaining bids from a plurality of service providers for providing a service," as recited in claim 1.

Claims 12 and 23 recite subject matter addressed above with respect to claim 1 and are allowable for the same reasons. Since claims 2-11, 13-22, and 24-33 depend from claims 1, 12, and 23, the same distinctions between *Faber* and *Baldwin* and the invention recited in claims 1, 12, and 23 apply for these claims. Additionally, claims 2-11, 13-22, and 24-33 recite other additional combinations of features not suggested by the reference.

II. The Prior Art, When Considered as a Whole, Fails to Teach or Suggest Providing Bids from a Plurality of Service Providers and Receiving a Selection of a Service Provider (Group B)

More particularly, claim 3 recites:

3.   The method of claim 1, further comprising:
receiving a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider; and
placing an order with the selected service provider.

Neither *Faber* nor *Baldwin*, taken alone or in combination, teach or suggest providing the bids from the plurality of service providers and receiving a selection of a service provider. As stated above, *Faber* and *Baldwin* start with the premise that the consumer has selected a particular service provider. *Faber* and *Baldwin* are not concerned with **selecting** a service provider from a **plurality** of service providers for placing an order.

The Office Action states:

c. "Selection of a service provider". As noted above, Fader discloses in Figs 1 and 2 a plurality of service providers, and therefore, it is obvious to recognize that the selection of a service provider would depend on the availability of the service providers.

Office Action, dated September 18, 2003. Appellants respectfully disagree. *Faber* teaches directly away from the claimed invention, because *Faber* teaches a method and system in which customers bid against one another, wherein a highest bid determines which customer receives the service first. There is only one service and, hence, only one service provider being bid upon by a given group of customers in the teachings of *Faber*. Therefore, *Faber* does not teach, suggest, or render obvious a step of "receiving a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider," because it is the service provider that is selecting from a group of customers in *Faber*, rather than a customer selecting from a plurality of service providers, as in the claimed invention.

Claims 14 and 25 recite subject matter addressed above with respect to claim 3 and are allowable for the same reasons. Since the applied references, taken alone or in combination, fail to teach or suggest each and every claim limitation, claims 3, 14, and 25 are not rendered obvious by the proposed combination of *Faber* and *Baldwin*.

III. The Prior Art, When Considered as a Whole, Fails to Teach or Suggest Each Bid Including an Estimated Time to Perform a Service (Group C)

Claim 5 recites:

> 5. The method of claim 1, wherein the each bid further includes an estimated time to perform the service at a location associated with a corresponding service provider.

Faber and *Baldwin*, taken individually or in combination, fail to teach or suggest obtaining bids from a plurality of service providers, wherein each bid includes an estimated time to perform the service at a location associated with a corresponding service provider. These features are not addressed in the Office Action; therefore, the rejection is improper. The Office Action does not establish a *prima facie* case of obviousness for claim 5. Claims 16 and 27 recite subject matter addressed above with respect to claim 5 and are allowable for the same reasons. Since the applied references, taken alone or in combination, fail to teach or suggest each and every claim limitation, claims 5, 16, and 27 are not rendered obvious by the proposed combination of *Faber* and *Baldwin*.

IV. The Prior Art, When Considered as a Whole, Fails to Teach or Suggest a Route Determination Provider (Groups D and E)

Furthermore, claims 6, 17, and 28 recite obtaining route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider. The Office Action fails to address this feature and, thus, fails to establish a *prima facie* case of obviousness for these claims. *Faber* and *Baldwin*, taken alone or in combination, fail to teach or suggest obtaining route information from a route determination provider.

The Office Action states:

> e. "Routing information from a route provider". It is obvious to recognize that the role of a service provider such as service provider 200, Figs 1 and 2 of Fader is to route information from a first location to a second location.

Office Action, dated September 18, 2003. Appellants respectfully disagree. Even assuming, *arguendo*, that one would recognize that service providers "route" information, neither of the applied references teaches or suggests obtaining route information from a route determination provider. The applied references fail to teach or suggest each and every claim limitation;
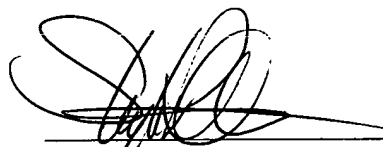
therefore, claims 6, 17, and 28 are not rendered obvious by the proposed combination of *Faber* and *Baldwin*. Since claims 7, 8, 18, 19, 29, and 30 depend from claims 6, 17, and 28, the same distinctions between *Faber* and *Baldwin* and the invention recited in claims 6, 17, and 28 apply for these claims.

V. The Prior Art, When Considered as a Whole, Fails to Teach or Suggest a Historical Database (Group E)

Still further, claims 7, 18, and 29 recite obtaining historical travel data from a historical database. The Office Action fails to address this feature and, thus, fails to establish a *prima facie* case of obviousness for these claims. *Faber* and *Baldwin*, taken alone or in combination, fail to teach or suggest obtaining historical travel data from a historical database. The applied references fail to teach or suggest each and every claim limitation; therefore, claims 7, 18, and 29 are not rendered obvious by the proposed combination of *Faber* and *Baldwin*. Since claims 8, 19, and 30 depend from claims 7, 18, and 29, the same distinctions between *Faber* and *Baldwin* and the invention recited in claims 7, 18, and 29 apply for these claims.

VI. Conclusion

In view of the above, Appellants respectfully submit that the rejections of claims 1-33 are overcome. Accordingly, it is respectfully urged that the rejections of claims 1-33 not be sustained.

Stephen R. Tkacs
Reg. No. 46,430
Carstens, Yee & Cahoon, LLP
PO Box 802334
Dallas, TX 75380
(972) 367-2001

APPENDIX OF CLAIMS

The text of the claims involved in the appeal reads:

1.   A method of providing service provider information to a client device in a distributed computer system, comprising:

   obtaining bids from a plurality of service providers for providing a service;

   determining an estimated time of completion for the service for each of the plurality of service providers; and

   providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device.

2.   The method of claim 1, further comprising:

   determining a service provider rating for each of the plurality of service providers; and

   providing the service provider rating for each of the plurality of service providers to the client device.

3.   The method of claim 1, further comprising:

   receiving a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider; and

   placing an order with the selected service provider.

4.   The method of claim 1, wherein the each bid includes a price for providing the service.

5.   The method of claim 4, wherein the each bid further includes an estimated time to perform the service at a location associated with a corresponding service provider.

6.   The method of claim 1, wherein determining an estimated time of completion for the service for each of the plurality of service providers includes obtaining route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider.

7.   The method of claim 6, wherein determining an estimated time of completion for the service for each of the plurality of service providers further includes:

        obtaining historical travel data from a historical database; and

        calculating an estimated time of travel for each of the plurality of service providers based on the route information and the historical travel data.

8.   The method of claim 7, wherein determining an estimated time of completion for the service for each of the plurality of service providers further includes adding the estimated time of travel to an estimated time of performing the service at the second location.

9.   The method of claim 1, wherein the method is implemented in an electronic marketplace provider.

10.   The method of claim 9, wherein the electronic marketplace provider is present on a proxy server.

11.   The method of claim 9, wherein the electronic marketplace provider is present on the client device.

12.   An apparatus for providing service provider information to a client device in a distributed computer system, comprising:

a first interface which obtains bids from a plurality of service providers for providing a service; .

a processor which determines an estimated time of completion for the service for each of the plurality of service providers; and

a second interface which provides the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device.

13.   The apparatus of claim 12, wherein the processor determines a service provider rating for each of the plurality of service providers and the second interface provides the service provider rating for each of the plurality of service providers to the client device.

14.   The apparatus of claim 12, further comprising:

a third interface which receives a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider; and

a fourth interface which places an order with the selected service provider.

15.	The apparatus of claim 12, wherein each bid includes a price for providing the service.

16.	The apparatus of claim 15, wherein each bid further includes an estimated time to perform the service at a location associated with a corresponding service provider.

17.	The apparatus of claim 12, wherein the processor obtains route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider.

18.	The apparatus of claim 17, wherein the processor obtains historical travel data from a historical database and calculates an estimated time of travel for each of the plurality of service providers based on the route information and the historical travel data.

19.	The apparatus of claim 18, wherein the processor adds the estimated time of travel to an estimated time of performing the service at the second location.

20.	The apparatus of claim 12, wherein the apparatus is a part of an electronic marketplace provider.

21.	The apparatus of claim 20, wherein the electronic marketplace provider is present on a proxy server.

22.   The apparatus of claim 20, wherein the electronic marketplace provider is present on the client device.

23.   A computer program product in a computer readable medium for providing service provider information to a service consumer in a distributed computer system, comprising:

first instructions for obtaining bids from a plurality of service providers for providing a service;

second instructions for determining an estimated time of completion for the service for each of the plurality of service providers; and

third instructions for providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to a service consumer.

24.   The computer program product of claim 23, further comprising:

fourth instructions for determining a service provider rating for each of the plurality of service providers; and

fifth instructions for providing the service provider rating for each of the plurality of service providers to the service consumer.

25.   The computer program product of claim 23, further comprising:

fourth instructions for receiving a selection of a selected service provider from the

plurality of service providers and a command to place an order for the service with the selected

service provider; and

fifth instructions for placing an order with the selected service provider.

26.   The computer program product of claim 23, wherein each bid includes a price for

providing the service.

27.   The computer program product of claim 26, wherein each bid further includes an

estimated time to perform the service at a location associated with a corresponding service

provider.

28.   The computer program product of claim 23, wherein the second instructions include

instructions for obtaining route information based on a first location associated with the service

consumer and a second location associated with a corresponding service provider.

29.   The computer program product of claim 28, wherein the second instructions further

include:

instructions for obtaining historical travel data; and

instructions for calculating an estimated time of travel for each of the plurality of service

providers based on the route information and the historical travel data.

30.   The computer program product of claim 29, wherein the second instructions further include instructions for adding the estimated time of travel to an estimated time of performing the service at the second location.

31.   The computer program product of claim 23, wherein the computer program product is executed in an electronic marketplace provider.

32.   The computer program product of claim 31, wherein the electronic marketplace provider is present on a proxy server.

33.   The computer program product of claim 31, wherein the electronic marketplace provider is present on the client device.